



bound by the Customer Agreement. Plaintiff therefore cannot satisfy Rule 23(b)(3) because determining whether a person is bound by Sirius XM's Customer Agreement requires a fact-specific, highly individualized inquiry that, by definition, is not subject to common or generalized proof. For these reasons, and those set forth in Sirius XM's memorandum of law submitted in support of this motion, the Court should grant Sirius XM's motion.

Dated: December 16, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on December 16, 2013, a copy of the foregoing was filed electronically with the Clerk of Court using the ECF system which will send notification to the following ECF participants:

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